

JOSEPH J. SMITH,)	
)	
Plaintiff,)	Case No.: 2:16-cv-02156-GMN-NJK
vs.)	
)	ORDER
ONE NEVADA CREDIT UNION,)	
)	
Defendant.)	
)	

I. BACKGROUND

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75, Ex. 1 to Mot. Prelim. Approval Class Action Settlement, ECF No. 55-5). In the present Motion, Plaintiff proposes a *cy pres* distribution of the residual settlement funds to the National Consumer Law Center (“NCLC”). (Mot. Distrib. 2:13–15).

II. LEGAL STANDARD

A district court may consider a *cy pres* distribution of class action settlement funds “only after a valid judgment of damages has been rendered against the defendant” and “for the limited purpose of distributing unclaimed funds.” *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990). Overall, the doctrine of *cy pres* “allows a court to distribute unclaimed or non-distributable portions of a class action settlement fund to the ‘next best’ class of beneficiaries.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011). A class action settlement fund is considered non-distributable when “the proof of individual claims would be burdensome or distribution of damages costly.” *Six Mexican Workers*, 904 F.2d at 1305.

Accordingly, a *cy pres* distribution generally takes the form of donations to a third party that will indirectly benefit class members, rather than de minimis direct money payments to class members. *See Lane v. Facebook Inc.*, 696 F.2d 811, 819, 821 (9th Cir. 2012). Any third-party recipients of a *cy pres* award should be selected based on: (1) “the objectives of the underlying statute(s),” and (2) “the interests of the silent class members.” *Nachshin*, 663 F.3d at 1039.

Therefore, to properly provide for the “next best” class of beneficiaries, the distribution must bear a “direct and substantial nexus to the interests of absent class members.” *See Lane*, 696 F.2d at 821.

III. DISCUSSION

As an initial matter, the Court finds that a *cy pres* distribution is appropriate in this circumstance. A total of \$11,815.68 remains in the settlement fund; if these funds were to be distributed to the 11,355 class members, each individual’s recovery would be a de minimis amount of just over one dollar. *See In re Easysaver Rewards Litigation*, 906 F.3d 747 (9th Cir.

2018) (finding a second distribution to be de minimis when there were over one million potential class members, but only three million dollars in available funds); (Hack Decl. ¶¶ 3, 5, Ex. 1 to Mot. Distrib.). As such, the remaining settlement funds are non-distributable, and may be distributed to the “next best” class of beneficiaries through a *cy pres* program, as provided for in the Agreement. (Settlement Agreement ¶ 75, Ex. 1 to Mot. Prelim. Approval Class Action Settlement).

Defendant argues that the NCLC is an appropriate recipient for the *cy pres* distribution because the NCLC’s objectives are in line with the nature of the underlying lawsuit, as well as the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and such a distribution would benefit the silent class members.¹ (Mot. Distrib. 6:9–7:21). The Court agrees.

The underlying complaint in this case was brought pursuant to the FCRA, alleging that Defendant accessed class members’ consumer reports without permission, resulting in unlawful account reviews. (*See generally* Compl., ECF No. 1). The purpose of the FCRA is to ensure that consumer reporting agencies adopt reasonable procedures for credit reporting that are fair and equitable to the consumer, including a respect for confidentiality and the consumer’s right to privacy. *See* 15 U.S.C. § 1681(a)(4) and (b). *See also Safeco Ins. Co. v. Burr.*, 551 U.S. 47, 62 (2007) (recognizing that § 1681 sets out the FCRA’s purpose). Similarly, the NCLC is a nonprofit organization “dedicated to consumer protection and the promotion of fairness and justice in the marketplace.” (Dubois Decl. ¶ 3, Ex. 2 to Mot. Distrib., ECF No. 69). Therefore, the Court finds that the NCLC was selected as the *cy pres* beneficiary with respect to the objectives of the underlying statute.

Further, Defendant has demonstrated that a distribution to the NCLC will properly provide for the “next best” class of beneficiaries. First, the NCLC is a national organization; its reach is as widespread as the potential class members, meaning that a distribution to the NCLC

¹ Defendant did not dispute the designation of the National Consumer Law Center as the *cy pres* recipient.

1 will not prevent a class member’s potential benefit based on their geographic location. *See*
2 *Nachshin*, 663 F.3d at 1040 (rejecting the proposed *cy pres* recipient because it did not account
3 for the broad geographic distribution of the class).

4 Additionally, the NCLC contributes to the field of consumer protection in multiple
5 ways, all of which are likely to benefit potential class members. For example, the NCLC
6 organizes conferences and trainings to educate attorneys and advocates operating in the
7 consumer protection field. *See McKnight v. Uber Technologies, Inc.*, No. 14-cv-05615-JST,
8 2017 WL 3427985, at *6 (N.D. Cal. Aug. 7, 2017) (approving the NCLC as a *cy pres* recipient
9 because it “advocates on behalf of consumers, providing legal services and aid”); (Dubois Decl.
10 ¶ 5, Ex. 2 to Mot. Distrib.).

11 Finally, the NCLC publishes treatises and policy statements that provide practical advice
12 and analysis on a wide variety of consumer protection topics, including fair credit reporting.
13 (*Id.* ¶ 6–7). Thus, the NCLC plays a role in public education surrounding consumer issues by
14 sharing its research and insights with the media and other major news organizations. *See Lane*
15 696 F.3d at 822 (approving a *cy pres* recipient that educated consumers in field of the
16 underlying lawsuit); (Dubois Decl. ¶ 8, Ex. 2 to Mot. Distrib.). Therefore, a *cy pres* distribution
17 to the NCLC bears a “direct and substantial nexus to the interests of absent class members.”
18 *Lane* 696 F.3d at 821. *See also, e.g., Feist v. Petco Animal Supplies, Inc.*, No. 3:16-cv-01369-
19 H-MSB, 2018 WL 6040801, at *6 (S.D. Cal. Nov. 16, 2018) (approving the NCLC as a *cy pres*
20 recipient in a class action arising from FCRA violations because there is a sufficient nexus
21 between the recipient and the class members). Accordingly, the Court grants Plaintiff’s Motion
22 for Distribution to *Cy Pres* Recipient from the Residual Settlement Fund.

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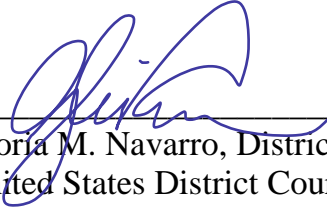
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1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Distribution to *Cy Pres*
3 Recipient from the Residual Settlement Fund, (ECF No. 69), is **GRANTED**.

4 **IT IS FURTHER ORDERED** that the claims administrator of the Settlement Fund
5 shall distribute the residual funds to National Consumer Law Center, after deducting any
6 necessary and reasonable administration costs.

7 **DATED** this 30 day of December, 2020.

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12 Gloria M. Navarro, District Judge
13 United States District Court
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